

LAW OFFICES

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MICHAEL F. GOLDMAN
HOWELL E. BEGLE, JR.
THOMAS J. KELLER
JOHN A. MERRIGAN
THOMAS E. ACEY, JR.
RICHARD L. CYS
ROBERT L. NELSON

*NOT ADMITTED IN THE DISTRICT OF COLUMBIA
PRACTICE LIMITED TO FEDERAL MATTERS

SUITE 1100
1660 L STREET, N. W.
WASHINGTON, D. C. 20036

12339

12339

RECORDATION NO. Filed 1425

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CABLE ADDRESS

VERLIP

OCT 23 1980 - 10 05 AM

(202) 452-7400

OCT 23 1980 - 10 05 AM

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

October 23, 1980

JOSEPH L. MANSON, III
ROBERT R. BRINKER
RUSSELL E. POMMER
ANN K. H. SIMON
W. CLARK MCFADDEN, II
L. JOHN OSBORN
FLOYD H. LEWIS
THOMAS R. HOWELL
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GEORGIA WELLINGTON-SMITH
DENNIS J. WHITTLESEY
DOUGLAS M. STEENLAND
RAYMOND S. SCZUDLO
RICHARD J. MORVILLO
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MARYANN CLIFFORD
ALAN S. MARK
DAVID G. HETZEL
ELLEN A. EFROS
JOYCE E. MAYERS
ANTHONY P. BISCEGLIE
ELLIOTT ABRAMS
MICHAEL P. MABILE
LAWRENCE RUDOLPH
RICHARD G. FEHRENBACHER
ELIZABETH A. CAMPBELL
BARBARA S. WAHL

MERRITT RUHLEN
WHITNEY GILLILLAND
OF COUNSEL

No.

OCT 23 1980

Date

Fee

50.00

ICC Washington, D. C.

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, D. C. 20423


Dear Ms. Mergenovich:

Transmitted herewith, for filing in the Commission's Equipment Register, are Railroad Equipment Leasing Agreement dated as of October 9, 1980 between New England Merchants Funding Corporation, Lessor, and Providence and Worcester Railroad Company, Lessee, with Schedule I and Exhibits A, B, C and D attached thereto; and Individual Leasing Record No. 1 dated October 23, 1980.

The transaction represented by these documents is an equipment lease under which Providence and Worcester Railroad Company is leasing 36 gondola cars from New England Merchants Funding Corporation, lessor.

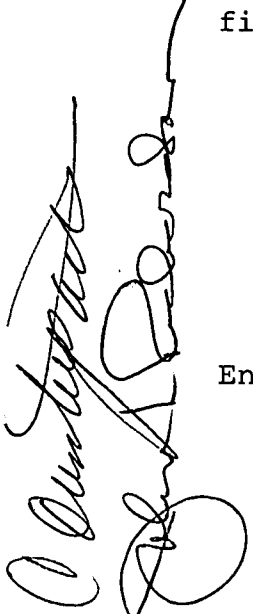
We are also enclosing our check made payable to the Commission in the amount of \$50 in payment of the required filing fee.

Respectfully submitted,


John L. Richardson
Counsel for Providence and
Worcester Railroad Company

OCT 26 10 00 PM '80
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

Enclosures



Interstate Commerce Commission

Washington, D.C. 20423

10/23/80

OFFICE OF THE SECRETARY

John L. Richardson, Atty
Verner, Lllpfert, Bernhard & McPherson
Suite 1100 1660 L. Street, N.W.
Washington, D.C. 20036

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/23/80 at 10:05am , and assigned re-recording number(s). 12339 & 12339-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

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Respectfully submitted,


John L. Richardson
Counsel for Providence and
Worcester Railroad Company

Enclosures

RAILROAD EQUIPMENT LEASING AGREEMENT

12339
RECORDATION NO. Filed 1425

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INTERSTATE COMMERCE COMMISSION

THIS RAILROAD EQUIPMENT LEASING AGREEMENT, dated as of October 19 80 (herein, as amended and supplemented from time to time, called "this Lease"), between NEW ENGLAND MERCHANTS FUNDING CORPORATION, a Massachusetts corporation (herein called "Lessor"), having its principal place of business at One Washington Mall, Boston, Massachusetts 02108, and PROVIDENCE AND WORCESTER RAILROAD COMPANY, a Rhode Island corporation (herein called "Lessee"), having its principal place of business at One Depot Square Woonsocket, Rhode Island 02895.

In consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Definitions. The following terms shall have the following meanings for all purposes of this Lease:

- (a) "Acquisition Cost" means, with respect to any Unit, an amount equal to the sum of (i) the purchase price for such Unit, as specified on the invoice therefor from the seller thereof to Lessor, plus (ii) any excise, sales and use taxes and any registration, license, titling, recording or filing fees paid or payable by Lessor on or with respect to the acquisition of such Unit, plus (iii) any costs and expenses approved and paid by Lessor in connection with the delivery of such Unit.
- (b) "Acquisition Expiration Date" means the Acquisition Expiration Date specified on the Schedule.
- (c) "Balance Sheet Date" means the Balance Sheet Date specified on the Schedule.
- (d) "Casualty Loss Value" of any Unit, as of the last day of any calendar month during the lease term thereof, means the amount equal to that percentage of the Acquisition Cost of such Unit as is set forth in Exhibit C attached hereto opposite such month.
- (e) "Equipment" means the units of railroad equipment described in Exhibit A attached hereto.
- (f) "Event of Default" means any of the events specified in Section 17 hereof.
- (g) "Individual Leasing Record" means the document substantially in the form of Exhibit B attached hereto.
- (h) "Maximum Lessor's Cost" means the amount specified as the Maximum Lessor's Cost on the Schedule.
- (i) "Schedule" means Schedule I attached hereto.
- (j) "Termination Value" of any Unit, and "Termination Date" with respect to any Unit, have the respective meanings given to such terms in Section 26 hereof.

- (k) "Units" or "Units of Equipment" mean those units of railroad Equipment described on Exhibit A attached hereto that are delivered and accepted by Lessee pursuant to Section 3 hereof, and "Unit" or "Unit of Equipment" means, individually, any of the Units.

2. Agreement for Lease of Equipment. Subject to the terms and conditions hereof, Lessor and Lessee agree that, on or before the Acquisition Expiration Date, Lessor shall lease to Lessee and Lessee shall lease from Lessor Units of Equipment having an aggregate Acquisition Cost not in excess of the Maximum Lessor's Cost. Lessor and Lessee shall evidence the leasing of one or more Units by executing and delivering to each other an Individual Leasing Record for such Unit(s), which will set forth a full description of such Unit(s), the Acquisition Cost of such Unit(s), the specific rent applicable thereto, and such other details as Lessee and Lessor may desire. Each reference herein to "this Lease", "herein", "hereunder", or other like words shall be deemed to include this Lease, the Schedule and all Individual Leasing Records executed pursuant hereto for all Units, all of which constitute one undivided lease of the Units and the terms and conditions of which are incorporated herein by reference. Anything in this Lease to the contrary notwithstanding, Lessor shall have no obligation to purchase any Unit and to lease the same to Lessee (i) prior to Lessor's receipt of evidence that all filing, registering, depositing, recording and publication required under Section 20 hereof has been accomplished, that a search of the records at the Interstate Commerce Commission disclose that there are no recorded liens or encumbrances on each such Unit, and an appropriate opinion or opinions of counsel for Lessee to the foregoing effect satisfactory to Lessor; (ii) prior to Lessor's receipt (in the case of the first Unit to be purchased by Lessor and leased hereunder) of (a) an opinion or opinions of Lessee's counsel addressed and satisfactory to Lessor, dated as of the date of this Lease, to the effect set forth in paragraph (a), (b), (c), (d), (f) and (g) of Section 16 hereof, (b) an Incumbency Certificate of Lessee, duly executed by the appropriate officers of Lessee, (c) appropriate evidence, satisfactory to Lessor, of Lessee's authorization of this Lease and of all documents incidental hereto, (d) evidence that Lessee has procured and is maintaining insurance of the type and amount required by Section 13 hereof, and (e) a Certificate of Good Standing under the laws of the state of Lessee's incorporation; (iii) prior to Lessor's receipt of a duly executed Bill of Sale from the seller of the Unit to Lessor, substantially in the form attached hereto as Exhibit E, an invoice from such seller to Lessor, as buyer, approved for payment by Lessee, covering such Unit, and an Individual Leasing Record for such Unit duly executed by Lessee; (iv) after the Acquisition Expiration Date; (v) if the Acquisition Cost of such Unit when added to the Acquisition Cost of all other Units would cause the Maximum Lessor's Cost to exceed the amount specified therefor in the Schedule; (vi) if an Event of Default has occurred and is continuing hereunder; (vii) if Lessor, in its reasonable judgment, determines that Lessee's financial condition or business operation (or that of any guarantor of Lessee's obligations) has suffered any material adverse change since the Balance Sheet Date specified in the Schedule; or (viii) if any of Lessee's representations and warranties set forth in Section 16 of this Lease are not then true and correct. If, for any of the reasons set forth in the foregoing clauses (i) through (viii) Lessor fails to purchase and lease any Unit to Lessee, Lessee shall pay forthwith to Lessor all amounts which Lessor has theretofore expended or thereafter may be or become obligated to

expend with respect to such Unit, including amounts payable to any seller of such Unit, and shall assume, undertake and relieve Lessor of all liabilities, obligations and duties of Lessor under any purchase order or purchase contract, or assignment of any purchase order or contract, relating to such Unit, and does hereby indemnify Lessor with respect to all such liabilities, obligations and duties. Upon any such payment by Lessee to Lessor and, if applicable, to any such seller, Lessor will transfer to Lessee, without recourse or warranty, on an as-is, where-is basis, all of Lessor's rights, title and interest, if any, in and to such Unit.

3. Delivery and Acceptance. Lessor shall not be liable to Lessee for any failure or delay in obtaining any Unit or making delivery thereof, unless such failure or delay is directly and solely attributable to the failure by Lessor to pay the purchase price for any Unit that has been delivered to and accepted by Lessee for any reason other than one or more of the reasons set forth in clauses (i) through (viii) of Section 2 hereof. Upon the delivery of each Unit, Lessee will forthwith inspect the same, and if such Unit is found to be acceptable, Lessee shall execute and deliver to Lessor an Individual Leasing Record for such Unit evidencing that, as between Lessor and Lessee, such Unit has been inspected to Lessee's satisfaction, is in good working order, repair and condition, and that Lessee has unconditionally accepted such Unit for lease under this Lease. Such Individual Leasing Record shall be dated the date of Lessee's said acceptance of such Unit. In the event that Lessee shall not have given Lessor written notice of any defect in or other proper objection to any Unit and Lessee fails to execute and deliver an Individual Leasing Record therefor to Lessor within fifteen (15) days of the delivery of such Unit to Lessee, it shall be conclusively presumed (at the option of Lessor, exercised by written notice from Lessor to Lessee) that such Unit has been unconditionally accepted by Lessee for lease under this Lease on said fifteenth (15th) day from the delivery thereof to Lessee with the same force and effect as if Lessee had executed and delivered an Individual Leasing Record therefor to Lessor.

4. Lease Term. The lease term of each Unit shall be for the number of calendar months specified on the Schedule (plus the number of days remaining in any partial first calendar month, if the Individual Leasing Record for such Unit is dated other than the first day of such calendar month), shall commence on the date of the Individual Leasing Record with respect thereto, and shall, unless sooner terminated in accordance with the provisions of this Lease, end on the date specified therefor in such Individual Leasing Record.

5. Rent. Lessee shall pay to Lessor rent for each Unit, monthly in advance, throughout the lease term thereof, in the amounts, at the times and on the dates specified in the Schedule and in the Individual Leasing Record for each Unit. In addition to the payment of monthly rent, Lessee shall also pay Lessor a rental adjustment amount quarterly, at the times, on the dates, in the amounts and under the circumstances specified in the Schedule. All rent and other payments provided for in this Lease to be made to Lessor shall be made to Lessor at its offices at One Washington Mall, Boston, Massachusetts 02108 or at such other place as Lessor or its assigns shall direct. All such payments shall be made in immediately available funds. THIS LEASE IS A NET LEASE, AND ALL RENT AND ALL OTHER SUMS PAYABLE BY LESSEE HEREUNDER SHALL BE PAID UNCONDITIONALLY, WITHOUT NOTICE OR DEMAND,

AND WITHOUT ANY OFFSET, DEDUCTION, COUNTERCLAIM, RECOUPMENT, ABATEMENT OR DIMINUTION FOR ANY REASON WHATSOEVER.

6. Lessor's Title; Identification Marks. Subject to the provisions of Sections 26 and 27 hereof, title to the Units shall at all times remain in Lessor and at no time shall title become vested in Lessee. Lessee will cause each Unit to be kept numbered with the road number set forth in Exhibit A attached hereto, or as otherwise directed by Lessor, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one-half inch in height, the words "Owned by a Lessor under a Lease filed under the Interstate Commerce Act, section 20c", or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's title to and interest in such Unit and the rights of Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. Lessee will not change the road number of any Unit unless and until (i) Lessor shall have been given 180 days prior written notice from Lessee of a proposed change, (ii) a statement of new number or numbers to be substituted therefor shall have been filed with Lessor and duly filed, recorded and deposited by Lessee in all public offices where this Lease shall have been filed, recorded and deposited, and (iii) Lessee shall have furnished Lessor an opinion of counsel to such effect. Upon receipt by Lessor of the notice referred to in clause (i) above with respect to any Unit, Lessor at its option may direct Lessee to have such Unit marked with a road number selected by Lessor, and Lessee at its own cost and expense shall forthwith cause the Unit to be marked as directed by Lessor. The Units may be lettered with the names or initials or other insignia customarily used by Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

7. Use of Units; Compliance with Laws and Rules. So long as no Event of Default has occurred and is continuing, Lessor will not interfere with Lessee's quiet use and possession of the Units. Lessee agrees to comply in all respect (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transport (Canada) and the applicable counterpart of such authority in Mexico, and the United States Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease, such laws or rules require any

alteration, replacement, addition or modification of or to any part on any Unit, Lessee will conform therewith at its own expense, and title to any additions or improvements so made shall thereupon vest in the Lessor; provided, however, that Lessee may at its own expense upon written notice thereof to the Lessor, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the property or rights of the Lessor under this Lease. Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by Lessee under the preceding sentence shall be owned by Lessee, and shall be removed by Lessee, at its expense, upon or prior to return of any Unit to the Lessor pursuant to Section 19 hereof, unless Lessor otherwise agrees. With the exception of occasional use in Canada and Mexico, the Units shall not be used or located outside of the continental limits of the United States.

8. Maintenance and Repair of Units. Lessee agrees, at its own cost and expense, to keep, repair, maintain and preserve the Units, in as good order, condition and repair as when delivered to Lessee hereunder, ordinary wear and tear from proper use thereof only excepted, and in compliance with such maintenance and repair standards as may be required to enforce warranty claims against the manufacturer or vendor of the Units, and in compliance with all requirements of law applicable to the maintenance and condition of the Units. Lessee hereby waives any right now or hereafter conferred by law to make repairs on any Units at the expense of Lessor.

9. Sublease, Assignment and Sale. Lessee will not, without the prior written consent of Lessor, sublease or otherwise relinquish possession of any Unit or assign, transfer, pledge or hypothecate this Lease, or any of Lessee's rights or obligations hereunder, in whole or in part, and any attempted sublease, relinquishment, assignment, transfer, pledge or hypothecation by Lessee, without having obtained such prior written consent shall be null and void; provided, however, that Lessee may assign this Lease to, or sublease any Unit to, Warwick Railway Company ("Warwick"), a wholly-owned subsidiary of Lessee, or any subsidiary of Lessee a majority of whose voting stock is owned by Lessee, or place any Unit in assigned service with any carrier or shipper; provided, further that (i) no such assignment, sublease or assigned service shall relieve Lessee of any of its obligations, accrued and executory, hereunder, and Lessee shall, at all times, remain primarily and not secondarily liable to Lessor for the payment and performance of all of such obligations, (ii) Lessee will promptly furnish Lessor with written notice of any such assignment, sublease or assigned service and copies of any written instruments effecting or evidencing the same, and (iii) it shall be a condition precedent that any such assignment, sublease or assigned service shall be subject and subordinate to this Lease, the terms and provisions hereof, and Lessor's rights and remedies hereunder. So long as no Event of Default has occurred and is continuing hereunder, Lessee may permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease; provided, however, that notwithstanding such

permitted usage, Lessee shall at all times remain primarily and directly liable to Lessor for the payment and performance of all of its obligations, accrued and executory, under this Lease. Lessor may, at any time, with or without notice to Lessee, but subject to Lessee's rights hereunder, transfer, sell, mortgage, grant a security interest in or assign this Lease or any Unit or any rent or other sums due or to become due hereunder, and in such event Lessor's transferee, purchaser, mortgagee or assignee shall have all of Lessor's rights, powers, privileges and remedies hereunder and shall not be obligated to perform any duty, covenant or condition required to be observed or performed by Lessor except the covenant not to interfere with Lessee's quiet use and possession of the Units so long as no Event of Default has occurred and is continuing and except for the duty to sell the Units to Lessee under the circumstances set forth in, and subject to the provisions of, Sections 26 and 27 hereof. In no event however shall Lessor be relieved from any of its obligations to Lessee hereunder. In the event of any assignment of this Lease, Lessee shall, upon receipt of written notice thereof, accept and comply with the directions and demands of Lessor's assignee and shall not assert against such assignee any defense, counterclaim or set-off that Lessee may have against Lessor.

10. Liens, Encumbrances. Lessee will not directly or indirectly create, incur, assume or suffer to exist any mortgage, security interest, pledge, lien, charge, encumbrance or claim on or with respect to the Units, Lessor's title thereto, or any interest therein, except (i) liens or encumbrances granted or placed thereon by Lessor pursuant to its rights under Section 9 hereof, and (ii) liens or encumbrances resulting from claims against Lessor but not against Lessee, and not resulting from Lessee's ownership of any Unit or the leasing of same to Lessee or from any default by Lessee. Lessee, at its own expense, will promptly pay, satisfy and otherwise take such action as may be necessary to keep the Units free and clear of, and to duly discharge, any such mortgage, security interest, pledge, lien, charge, encumbrance or claim other than the liens and encumbrances excepted above, and Lessee agrees to reimburse Lessor, by prompt payment on demand, for such sum or sums as Lessor, in Lessor's judgment, may be required to pay to release, satisfy or otherwise discharge any such mortgage, security interest, pledge, lien, charge, encumbrance or claim.

11. Risk of Loss, Damage or Destruction: Lessee hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, requisition or commandeering, partial or complete, of or to each Unit, however caused or occasioned, such risk to be borne by Lessee with respect to each Unit from and after the date of the shipment thereof from the manufacturer or seller thereof to Lessee. Lessee agrees that no occurrence specified in the preceding sentence shall impair, in whole or in part, any obligation of Lessee to Lessor under this Lease, including, without limitation, the obligation to pay rent. In the event that any Unit has become lost, stolen, destroyed or irreparably damaged from any cause whatsoever, or taken, confiscated, requisitioned or commandeered (any such event being called herein an "Event of Loss"), Lessee shall promptly notify Lessor in writing of such fact, fully informing Lessor of all details with respect thereto, and Lessee shall pay Lessor in immediately available funds, on the last day of the month in which such Event of Loss has occurred, an amount equal to

the sum of (i) the Casualty Loss Value of such Unit as of the last day of such month, plus (ii) all accrued and unpaid rent payable for such Unit through the last day of such month, plus (iii) all other amounts then owing hereunder with respect to such Unit, including amounts owing for indemnification. Upon the making of such payment by Lessee, the rent for such Unit shall cease to accrue, the lease term of such Unit shall terminate, and all of Lessor's right, title and interest in such Unit shall automatically pass to Lessee, on an as-is, where-is basis, and without recourse or warranty.

12. Insurance. Lessee will cause to be carried and maintained, at its sole expense, with respect to each Unit at all times during the lease term thereof and until the Unit has either been purchased by Lessee pursuant to Sections 26 or 27 hereof or returned to Lessor pursuant to the provisions of Section 19 hereof, (i) insurance in an amount not less than the greater of the Casualty Loss Value of the Unit or the replacement value of the Unit, insuring against all risks of physical loss or damage to the Unit, and against such other risks as Lessee would, in the prudent management of its properties, maintain with respect to similar equipment owned by it, and (ii) insurance against liability for bodily injury, death and property damage resulting from the ownership, maintenance, use or operation of the Unit in such amounts as are comparable to the amounts it carries on any other rail cars leased or owned by it, but in no event in amounts less than those set forth under Public Liability Insurance in the Schedule. Such insurance policy or policies will name Lessor (and any assignee of Lessor) as the sole loss payee on all policies referred to in clause (i), so that (and Lessor and Lessee hereby agree that) the insurance proceeds payable under such policies will be payable and paid solely to Lessor (and to any assignee of Lessor), and will name Lessor as an additional insured on all policies referred to in clause (ii). Such policies will provide that the same may not be invalidated against Lessor by reason of any violation of a condition or breach of warranty of the policies or the application therefor by Lessee, that the policies may be cancelled or materially altered by the insurer only after thirty (30) days' prior written notice to Lessor, and to any assignee of Lessor, and that the insurer will give written notice to Lessor and any assignee of Lessor, in the event of nonpayment of premium by Lessee when due. If Lessor shall receive any insurance proceeds from insurance maintained by Lessee pursuant to clause (i) of this Section 12 in respect of a Unit suffering an Event of Loss, Lessor shall pay such proceeds to Lessee provided that Lessor has received payment of the applicable Casualty Loss Value of such Unit plus the other amounts specified in Section 11 hereof and provided no Event of Default has occurred and is continuing hereunder. If any such insurance proceeds are received with respect to an occurrence which does not constitute an Event of Loss, or if Lessee replaces the Unit which is the subject of an Event of Loss pursuant to the provisions of Section 11 hereof, and no Event of Default has occurred and is continuing, such proceeds may be applied in payment for repairs or replacement property, as applicable, or to reimburse Lessee for having made such payments. If an Event of Default has occurred and is continuing, such proceeds shall be applied as Lessor in its sole discretion may determine. The policies of insurance required under this Section shall be valid and enforceable policies issued by insurers of recognized responsibility acceptable to Lessor. Upon the execution of this Lease, and thereafter not

less than 10 days prior to the expiration dates of any expiring policies theretofore furnished under this Section, originals of the policies of insurance required by this Section shall be delivered by Lessee to Lessor; provided, however, that Lessor may accept copies of the policies, certificates of insurance or other satisfactory evidence in lieu of original policies. Such policies may be blanket policies covering other units of railroad equipment not subject to this Lease, provided that any such blanket policy, or certificate of insurance issued with respect thereto, shall specifically describe the Units as being included therein and covered thereby to the full extent of the coverages and amounts required hereunder. If Lessee shall fail to cause the insurance required under this Section to be carried and maintained, Lessor may provide such insurance and Lessee shall reimburse Lessor upon demand for the cost thereof as additional rent hereunder. Lessee may self-insure with respect to the risks specified in clause (i) of this Section 12.

13. Fees and Taxes. Lessee hereby assumes liability for, and will pay and discharge, when and as due and payable, all license, title, documentation, recording, filing, registration and qualification fees, and all taxes, levies, imposts, duties, withholdings and governmental charges of any kind or nature whatsoever (together with any fines, penalties, or interest thereon) imposed upon Lessor, Lessee, or any Unit by any federal, state or local government or taxing authority in the United States, or by any taxing authority or governmental subdivision of a foreign country, upon or with respect to any Unit, or upon the ordering, purchase, ownership, delivery, leasing, possession, use, maintenance, registration, recording, titling, documentation, operation, return, sale or other disposition thereof, or upon the rents, receipts, or earnings arising therefrom, or upon or with respect to this Lease, and Lessee shall indemnify, protect, save and hold harmless Lessor from and against, and shall reimburse Lessor for, any and every payment of such fees, taxes, levies, imposts, duties, withholdings, and governmental charges (excepting only net income taxes based upon or measured by Lessor's net income, as net income is presently determined under the Internal Revenue Code of 1954, as amended, and which are imposed or levied by any federal, state or local taxing authority in the United States). If Lessor shall pay any such fees, taxes, levies, imposts, duties, withholdings or governmental charges directly to the appropriate government or taxing authority, Lessee, upon receipt of an invoice therefor from Lessor, will promptly reimburse Lessor in full for all amounts so paid. If Lessor notifies Lessee, in writing, of its liability to pay any such fees, taxes, levies, imposts, duties, withholdings or governmental charges, Lessee will do so promptly after receipt of such notification. If any report or return is required to be made with respect to any obligation of Lessee under, or arising out of, this Section, then Lessee will promptly notify Lessor of such requirement and shall promptly provide Lessor with all information necessary to make and file timely such report or return and, at the request of Lessor, shall make and file such report or return in a timely fashion and in such manner as Lessor shall direct. Lessee shall provide a copy of such report or return to Lessor promptly after the filing thereof. The provisions of this Section 13 shall survive the expiration or earlier termination of this lease and the lease term of all Units leased hereunder. If Lessee disputes the assessment or imposition of any tax payable by Lessee under this Section 13, Lessee may withhold the payment of

such tax and contest the same, at its sole expense, provided that (i) Lessee fully indemnifies Lessor, in a manner and in an amount reasonably satisfactory to Lessor, for the payment of such tax and all penalties and interest which may be incurred by Lessor as a result of such withholding of payment and/or contest, (ii) any such withholding of payment and/or contest is made by Lessee in good faith and on the advice of counsel, and, in the case of any contest, by proceedings diligently conducted, and (iii) no such withholding and/or contest subjects any Unit to foreclosure, seizure, sale, forfeiture or lien or adversely affects the rights of Lessor hereunder.

14. Indemnification. Lessee assumes liability for, and will pay when due, and will indemnify, protect, save, defend, and hold Lessor, its agents, employees, officers, directors, successors, and assigns harmless from and against, any and all obligations, fees, liabilities, losses, damages, penalties, claims, actions, suits, costs and expenses, including legal expenses, of every kind and nature whatsoever imposed on, incurred by, or asserted against, Lessor, its agents, employees, officers, directors, successors and assigns, in any way relating to or arising out of (a) the manufacture, ordering, purchase, acceptance or rejection, ownership, titling or retitling, registration or reregistration, delivery, leasing, possession, use, operation, removal, return, sale or other disposition of any Unit, including, without limitation, any of such as may arise from patent or latent defects in any Unit (whether or not discoverable by Lessee), any claims based on strict liability in tort, and any claims based on patent, trademark or copyright infringement, or (b) any failure on the part of Lessee to perform or comply with any of the terms of this Lease. Lessee shall give Lessor prompt notice of any occurrence, event or condition known to Lessee as a consequence of which Lessor may be entitled to indemnification hereunder. Lessee shall forthwith upon demand of Lessor reimburse Lessor for amounts expended by Lessor in connection with any of the foregoing or pay such amounts directly. To the extent Lessor receives indemnification payments from Lessee, Lessee shall be subrogated, to the extent of such payments, to Lessor's rights with respect to the transaction or event requiring such indemnification. Lessee will promptly, at its own expense, assume the defense of any claim, suit or action as to which Lessee has an obligation to indemnify under this Section 14, retaining counsel reasonably acceptable to Lessor and its assigns. The provisions of this Section 14 shall apply from the date of the execution of this Lease notwithstanding that the lease term has not yet commenced with respect to any Unit, and shall survive the expiration or earlier termination of this Lease and of the lease term of all Units leased hereunder.

15. NO WARRANTIES BY LESSOR. LESSOR, NOT BEING THE MANUFACTURER OR VENDOR OF THE UNITS, HEREBY MAKES NO REPRESENTATION OR WARRANTY, EITHER EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF ANY UNIT, ITS MERCHANTABILITY, DURABILITY, SUITABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE UNITS, OR THE CONFORMITY OF THE UNITS TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER OR ORDERS RELATING THERETO, OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, AND LESSOR HEREBY DISCLAIMS ANY SUCH REPRESENTATION

OR WARRANTY (WHICH DISCLAIMER LESSEE HEREBY ACKNOWLEDGES). WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LESSOR SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY DEFECTS, EITHER PATENT OR LATENT (WHETHER OR NOT DISCOVERABLE BY LESSEE), IN ANY UNIT, OR FOR ANY DIRECT OR INDIRECT DAMAGE TO PERSONS OR PROPERTY RESULTING THEREFROM, OR FOR LESSEE'S LOSS OF USE OF ANY UNIT OR FOR ANY INTERRUPTION IN LESSEE'S BUSINESS CAUSED BY LESSEE'S INABILITY TO USE ANY UNIT FOR ANY REASON WHATSOEVER. So long as no Event of Default has occurred and is continuing hereunder, Lessor hereby authorizes Lessee, at Lessee's expense, to assert during the lease term of Units leased hereunder all of Lessor's rights under any manufacturer's, warranty on the Units (other than any warranty of title to the Units or any separate rights of indemnification which Lessor may have against such manufacturer); provided, however, that Lessee shall indemnify, protect, save, defend, and hold harmless Lessor from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by Lessor in connection therewith, as a result of, or incident to, any action by Lessee pursuant to the above authorization.

16. Lessee's Representations and Warranties. Lessee hereby represents and warrants to Lessor that:

- (a) Lessee is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and is qualified to do business in every jurisdiction in which the nature of the business transacted by Lessee makes such qualification necessary; Lessee has the power and authority to execute and perform this Lease, and has duly authorized the execution, delivery and performance of this Lease. Lessee is the successor by merger, effective October 1, 1980, to Providence and Worcester Company, a Delaware corporation ("Old P&W"); all necessary corporate action has been taken to authorize and effectuate the merger of Old P&W into Lessee; all required consents and approvals have been obtained from all persons, regulatory authorities or otherwise, whose consent or approval was necessary in order to authorize and effectuate said merger, including, without limitation, the Interstate Commerce Commission; and all notices and filings required to be given and made with any governmental authority, regulatory authority, board or commission, in connection with, or as a condition to the authorization or effectiveness of, said merger have been given and made. Lessee is a wholly-owned subsidiary of Providence and Worcester Company, a Delaware corporation.
- (b) No authorization or approval from any governmental or public regulatory body or authority of the United States of America, or any of the States thereof or the District of Columbia, or of Mexico, or of Canada, or any province or territory thereof, and including, without limitation, the Interstate Commerce Commission and the Department of Transport (Canada) is necessary for the execution of this Lease by Lessee and the payment and performance by Lessee of all of Lessee's obligations hereunder.

- (c) The Units will be used in interstate commerce. Prior to the delivery and acceptance of any Unit under this Lease, this Lease will have been duly filed with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, and such filing will protect Lessor's interest in and to this Lease and the Units, against the claims of all persons, and no other filing, recording or deposit with any other Federal, state or local government is necessary in order to protect the interests of Lessor under this Lease and in and to the Units in any state of the United States of America or the District of Columbia, against the claims of all persons. Prior to the use of any Unit in Canada, a counterpart of this Lease will have been duly deposited in the office of the Registrar General of Canada pursuant to Section 86 of the Canadian Railway Act, and a notice of such deposit will have been duly given in the Canada Gazette pursuant to Can. Rev. Stat. c.R-2, sec. 86, and such filing and such publication will protect Lessor's interest in and to this Lease and Units against the claims of all persons in Canada, and no other filing, recording or deposit with the Federal government of Canada or with any provincial or territorial government of Canada (and no other publication of the filing to be made with the Registrar General of Canada) is necessary in order to protect the interests of Lessor under this Lease and in and to the Units in Canada or any province or territory thereof against the claims of all persons in Canada. No filing or publication is required in Mexico to protect the interests of Lessor under this Lease and in and to Units which may be used in Mexico against the claims of all persons in Mexico.
- (d) This Lease constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms, and the execution, delivery and performance of the same by Lessee will not violate Lessee's Charter, Certificate of Incorporation, or By-Laws, or any provisions of law, any order of any court or other agency of government, or any indenture, agreement or other instrument to which Lessee is a party, or by or under which Lessee or any of Lessee's property is bound, or be in conflict with, result in a breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon the Units or any of Lessee's property or assets.
- (e) All balance sheets, statements of profit and loss and other financial data that have been delivered to Lessor with respect to Lessee (i) are complete and correct in all material respects, (ii) accurately present the financial condition of Lessee on the date for which, and the results of its operations for the periods for which, the same have been furnished and (iii) have been certified by Lessee's independent certified public accountants, in the case of the audited financial statements, and by Lessee's chief

financial officer, in the case of any unaudited financial statements, and have been prepared in accordance with generally accepted accounting principles consistently followed throughout the periods covered thereby; all balance sheets disclose all known liabilities, direct and contingent, as of their respective dates; and there has been no change in the condition of Lessee, financial or otherwise, since the Balance Sheet Date specified in the Schedule, other than changes in the ordinary course of business, none of which changes has been materially adverse.

- (f) No mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interest therein of Lessee, now attaches or hereafter will attach to the Units, or in any manner affects or will affect adversely Lessor's right, title and interest therein.
- (g) There are no suits or proceedings pending, or, to the knowledge of Lessee threatened, in any court or before any regulatory commission, board or other administrative governmental agency against or affecting Lessee, which will have a material adverse effect on the financial condition or business of Lessee, or any subsidiary of Lessee, other than any litigation referred to in Lessee's December 31, 1979 Balance Sheet and Profit and Loss Statement, including specifically the litigation with Consolidated Rail Corporation in Delaware.
- (h) All information concerning Lessee's financial condition and business operations which shall be submitted by Lessee pursuant to Section 21 hereof shall be true and correct.
- (i) Lessee and its consolidated subsidiaries have filed all United States income tax returns which are required to be filed, and have paid, or made provisions for the payment of, all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by Lessee or such consolidated subsidiaries, except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided.

17. Events of Default. The occurrence of any of the following events shall constitute a default by Lessee hereunder (herein called an "Event of Default"):

- (a) Failure of Lessee to make any payment of rent or any other payment hereunder within ten (10) days after the same is due and payable; or
- (b) Failure of Lessee to observe or perform any of the covenants of Lessee set forth in Sections 9 and 12 hereof; or
- (c) Failure of Lessee to perform or observe any other covenant, condition, or agreement to be performed or observed by it under this Lease or any supplement hereto, and the continuance of such failure for ten (10) days after written notice to Lessee specifying such failure and demanding the same to be remedied; or

- (d) Lessee shall be in default under any agreement, instrument or document heretofore, now or hereafter executed by Lessee and Lessor (or any parent, subsidiary or affiliate of Lessor), or Lessee shall be in default in the payment or performance of any other obligation of Lessee (or of any guarantor of Lessee's obligations hereunder) to Lessor (or to any parent, subsidiary or affiliate of Lessor); or any obligation of Lessee to any other person or entity for the payment of borrowed money, or for the payment of rent or hire under any lease agreement, shall not be paid promptly at maturity or within any grace period permitted, whether such maturity be by acceleration or otherwise, or shall be declared due and payable prior to the maturity thereof, provided that Lessor notifies Lessee in writing that such failure to pay or asserted failure to pay by Lessee constitutes a default hereunder, and (i) such failure to pay or asserted failure to pay by Lessee shall continue unremedied for 30 days following Lessee's receipt of such written notice from Lessor unless the same is then being contested by Lessee, in good faith, on the advice of counsel, or (ii) Lessee or any such guarantor shall fail to promptly institute such judicial proceedings as are necessary to remove or nullify any execution, garnishment, judgment or other action, legal or otherwise, taken against it by reason of such failure or asserted failure to pay); or any judgment for the payment of money shall be rendered against Lessee (or any guarantor), or an attachment or other lien shall be filed or levied against the property of Lessee (or any such guarantor), and such judgment shall continue unstayed and in effect, or such attachment or lien shall continue undischarged or unbonded, for a period of 30 days; or
- (e) Lessee (or any guarantor of Lessee's obligations hereunder) shall become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver; or a trustee or a receiver shall be appointed for Lessee (or for any such guarantor) or for a substantial part of its property without its consent and shall not be dismissed for a period of 30 days; or bankruptcy, reorganization, debt arrangement, liquidation, insolvency or dissolution proceedings shall be instituted by or against Lessee (or any such guarantor) and, if instituted against Lessee (or any such guarantor), shall be consented to or be pending and not dismissed for a period of 60 days; or any execution or writ or process shall be issued under any action or proceeding against Lessee whereby any Unit may be taken or restrained; or Lessee's (or any such guarantor's) corporate existence shall cease; or Lessee shall, without Lessor's prior written consent, sell, transfer or dispose of all or substantially all of its assets or property, or consolidate or merge with any other entity, or engage in any form of corporate reorganization;
- (f) Any representation or warranty made by Lessee under this Lease or any supplement or addendum hereto or in any Individual Leasing Record, or in any document or certificate furnished Lessor in

connection herewith or pursuant hereto (or made by any guarantor of Lessee's obligations under any guaranty or other document) shall prove to be untrue or incorrect at any time in any material respect.

18. Remedies Upon Default. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing and shall not have been remedied, Lessor may, at its option, declare this Lease to be in default and, at any time thereafter, may exercise one or more of the following remedies, as Lessor in its sole discretion shall elect:

- (a) Lessor may terminate this Lease as to any or all Units upon written notice to Lessee, without prejudice to any other remedies of Lessor hereunder;
- (b) Lessor shall have the right to compel the return of all of the Units to Lessor in accordance with the provisions of Section 19 hereof;
- (c) Lessor may enter upon the premises where any Unit is located and, without notice to Lessee, and with or without legal process, take immediate possession of and remove any such Unit, all without liability to Lessor for or by reason of such entry or taking possession, whether for the restoration of damage to property caused by such taking or otherwise, and without such action constituting a termination of this Lease unless Lessor expressly notifies Lessee in writing to that effect;
- (d) Lessor may hold or use any Unit or may sell any or all of the Units at public or private sale, and may bid for and purchase any Unit at any such sale, or Lessor may elect to re-lease any or all of the Units. Lessee shall forthwith pay Lessor an amount equal to the sum of any unpaid rent due on or with respect to any period through the last day of the calendar month in which the Event of Default has occurred, and Lessee shall also forthwith pay to Lessor (i) as damages for loss of the bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Loss Value of each Unit as of the last day of the calendar month next preceding the calendar month in which the Event of Default has occurred over (A) if Lessor shall have sold or otherwise disposed of such Unit, the net proceeds from such sale or disposition, or (B) if Lessor is unable to sell or otherwise dispose of such Unit, the amount Lessor reasonably estimates to be the net sales value of such Unit at such time, in each case after deducting all of Lessor's costs and expenses in connection therewith (including, without limitation, commissions and attorneys' fees) and any amount for which Lessor would be liable or which would constitute a lien on such Unit if not paid; and (ii) all other amounts then payable to Lessor hereunder, including amounts owing for indemnification;

- (e) Lessor may avail itself of any other remedy provided by any statute or otherwise available at law, in equity or in bankruptcy, and may proceed by appropriate court action or actions at law or in equity or in bankruptcy to enforce performance by Lessee of the covenants and terms of this Lease, and/or to recover damages for the breach thereof.

No remedy referred to in this Section 18 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity or in bankruptcy, and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other remedies. No waiver by Lessor of any Event of Default hereunder shall in any way be or be construed to be a waiver of any future or subsequent Event of Default. Lessee shall also be liable for all costs and expenses (including attorneys' fees and disbursements and the costs of any retaking) incurred by reason of the occurrence of any Event of Default and the exercise of Lessor's remedies with respect thereto.

19. Return of Units upon Default. Upon the occurrence of an Event of Default, Lessee shall forthwith deliver possession of the Units to Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear from proper use thereof excepted and shall meet at least the minimum standards then required for a third party purchaser or third party lessee to immediately operate such Unit without further inspection, repair, replacement, alterations or improvements (excluding third party peculiar requirements for compatibility with then existing third party products, equipment or facilities) under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. For the purpose of delivering possession of any Unit or Units to Lessor as above required, Lessee shall at its own cost, expense and risk:

- (a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged, and any carrier or shipper with whom any Unit has been placed in assigned service, to return the Unit or Units so interchanged or so placed in service) place such Units upon such storage tracks of Lessee or any of its affiliates or, at the expense of Lessee, on any other storage tracks, as Lessor reasonably may designate;

- (b) permit Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or (for a period of 45 days) storage until such Units have been sold, leased or otherwise disposed of by Lessor; and

- (c) transport the same to any place on any lines of a railroad or to any connecting carrier for shipment, all as directed by Lessor.

The assembling, delivery, storage, insurance (whether through self-insurance or otherwise) and transporting of the Units as hereinbefore provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units. During any storage period, Lessee will, at its own cost and expense, insure (whether through self-insurance or otherwise), maintain and keep the Equipment in good order and repair and will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same. All amounts earned in respect of the Units after the occurrence of an Event of Default and written notice thereof from Lessor to Lessee shall belong to the Lessor and, if received by Lessee, shall be promptly turned over to Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 90 days after such termination, and provided Lessor has declared this Lease to be in default, Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .0515766% of the Acquisition Cost of such Unit for each such day exceeds the actual earnings received by Lessor on such Unit for each such day.

20. Recording. Lessee, at its own expense, will cause this Lease (and if requested by Lessor, each Individual Leasing Record) to be filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 20c, and, if any Unit is used in Canada, to be deposited in the office of the Registrar General of Canada prior to such use, pursuant to Section 86 of the Canadian Railway Act. Lessee, at its own expense will cause a notice of any such filing with the Registrar General of Canada to be forthwith published in the Canada Gazette pursuant to Can. Rev. Stat. c.R-2, sec. 86. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to its satisfaction, of Lessor's interests in the Units, or for the purpose of carrying out the intention of this Lease. Lessee will promptly furnish to Lessor evidence of all such filing, registering, depositing, recording and publication required by this Section 20, and an appropriate opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor.

21. Financial Information. Lessee agrees to furnish Lessor (a) as soon as available, and in any event within 120 days after the last day of each fiscal year of Lessee, a copy of the consolidated balance sheet of Lessee and its consolidated subsidiaries as of the end of such fiscal year, and related consolidated statements of income and retained earnings of Lessee and its consolidated subsidiaries for such fiscal year, certified by an independent certified public accounting firm of recognized standing, each on a comparative basis with corresponding statements for the prior fiscal year, (b) within 60 days after the last day of each fiscal quarter of Lessee (except the last such fiscal quarter), a copy of the balance sheet as of the end of such quarter, and statement of income and retained

earnings of Lessee and its consolidated subsidiaries covering the fiscal year to date, each on a comparative basis with the corresponding period of the prior year, all in reasonable detail and certified by the treasurer or principal financial officer of Lessee; (c) contemporaneously with its transmittal to each stockholder of Lessee and to the Securities and Exchange Commission, all such other financial statements and reports as Lessee shall send to its stockholders and to the Securities and Exchange Commission; (d) as soon as available to Lessee, the notice of any adjustment resulting from any audit of the books and/or records of Lessee by any taxing authority having jurisdiction over Lessee; and (e) such additional financial information as Lessor may reasonably request concerning Lessee.

22. Late Charges. Any non-payment of rent or other amounts payable under this Lease shall result in Lessee's obligation to promptly pay Lessor as additional rent on such overdue payment, for the period of time during which it is overdue (without regard to any grace period), interest at a rate equal to the lesser of (a) the Late Charge Rate Per Annum specified in the Schedule, or (b) the maximum rate of interest permitted by law.

23. Lessor's Right to Perform for Lessee. If Lessee fails to duly and promptly pay, perform or comply with any of its obligations, covenants and agreements under this Lease (except for the payment of rent) Lessor may itself pay, perform or comply with any of such obligations for the account of Lessee, without thereby waiving any Event of Default, and any amount paid or expense incurred by Lessor in connection therewith (including attorneys' fees) shall, together with interest at the Late Rate Charge Per Annum specified in the Schedule, be payable to Lessor on demand.

24. Notices. Any notice required or permitted to be given under this Lease shall be in writing, and shall become effective when delivered personally or when deposited in the United States mail with proper postage for ordinary mail prepaid, addressed to Lessor or Lessee, as the case may be, at their respective addresses as set forth herein or at such other address as Lessor or Lessee, as the case may be, shall from time to time designate in writing to the other party.

25. Miscellaneous. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating or diminishing Lessor's rights under the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision of this Lease prohibited or unenforceable in any respect. No term or provision of this Lease may be amended, altered, waived, discharged or terminated orally, but only by an instrument in writing signed by a duly authorized officer of the party against which the enforcement of the amendment, alteration, waiver, discharge or termination is sought. A waiver on any one occasion shall not be construed as a waiver on a future occasion. This Lease shall in all respects be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts. All of the covenants and agreements of

Lessee contained in this Lease shall survive the expiration or earlier termination of this Lease and the lease term of all Units leased hereunder. All of the covenants, conditions and obligations contained in this Lease shall be binding upon and shall inure to the benefit of the respective successors and assigns of Lessor and (subject to the restrictions of Section 9 hereof) Lessee. This Lease, the Schedule, each Exhibit attached hereto, and each Individual Leasing Record constitute the entire agreement of Lessor and Lessee with respect to the leasing of the Units and cancels and supersedes any and all prior oral or written understandings with respect thereto.

26. Right of Early Termination. Lessee shall have the right, at its option and on at least 120 days' prior written notice to Lessor, to terminate this Lease as to all Units then leased hereunder as of any succeeding monthly rent payment date specified in such notice (the termination date specified in such notice being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than the date on which the thirty-sixth (36th) full monthly rent payment for all of the Units has been made to Lessor, and (ii) no Event of Default or other event which after the lapse of time or notice or both would become an Event of Default shall have occurred and be continuing. On such Termination Date, the Lessee shall pay to Lessor an amount equal to the sum of (i) the Termination Value (hereinafter defined) of each Unit computed as of such Termination Date (after giving effect to the payment of rent actually received by Lessor on such Date), plus (ii) the monthly rental payment due and payable for each Unit on such Termination Date, plus any accrued and unpaid rent owing for any prior month, plus (iii) if such Termination Date is a Quarterly Rental Adjustment Date (as defined in the Schedule), the amount of any Quarterly Rental Adjustment (as defined in the Schedule) due and payable on such Date, plus (iv) all other amounts then owing hereunder with respect to such Units, including amounts owing for indemnification. Upon the making of such payment by Lessee, Lessor shall execute and deliver to Lessee a bill of sale for such Unit, transferring to Lessee, on an as-is, where-is basis, without recourse to, or warranty by, Lessor, all of Lessor's right, title and interest in and to such Unit. The Termination Value of each Unit as of the Termination Date on which such payment is to be made shall be an amount equal to that percentage of the Acquisition Cost of the Unit as is set forth in Exhibit D attached hereto opposite the monthly rent payment number that corresponds to such Termination Date.

27. Purchase of Units at Expiration of Lease Term. Upon the expiration of the lease term of each Unit (and provided that the lease term of such Unit has not been sooner terminated pursuant to the provisions of this Lease) Lessor shall sell such Unit to Lessee, and Lessee shall purchase such Unit from Lessor, for an amount, payable in immediately available funds, equal to the sum of (a) ten percent (10%) of the Acquisition Cost of such Unit, plus (b) an amount equal to all sales, or excise or similar taxes on or measured by the sale of such Unit to Lessee. If an Event of Default has occurred and is continuing, Lessor shall have the option (exercisable by written notice from Lessor to Lessee), not to sell any Unit to Lessee. The sale of each Unit pursuant to this Section 27 will be on an

AS-IS, WHERE-IS, basis, without recourse to, or warranty by, Lessor, except that Lessor will convey to Lessee whatever title was conveyed to Lessor by the seller of each such Unit.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed by their duly authorized representatives as of the date first written above.

Attest:

[Signature]
Assistant Clerk

(Corporate Seal)

NEW ENGLAND MERCHANTS FUNDING CORPORATION

(Lessor)

By:

[Signature]

Its:

President
(Title)

B

ATTEST:

[Signature]
Secretary

(Corporate Seal)

PROVIDENCE AND WORCESTER RAILROAD COMPANY

(Lessee)

By:

[Signature]

Its:

VICE PRESIDENT
Title

SCHEDULE I TO RAILROAD EQUIPMENT LEASING AGREEMENT (the "Lease")

(All capitalized terms used herein, which are not otherwise defined herein shall have the meaning given to such terms in the Lease).

Lease Term of Each Unit: ninety-six (96) full calendar months, plus any partial first calendar month.

Rent for each Unit: (a) monthly rent: an amount for each full month of the lease term equal to 1.5473% of the Acquisition Cost of each Unit, payable monthly in advance on the first day of each calendar month, commencing with the first day of the first full calendar month following the date of the Individual Leasing Record for the Unit, or commencing on the date of such Individual Leasing Record, if such date is the first day of a calendar month.

(b) partial first month's rent: an amount determined by multiplying (i) the Acquisition Cost of the Unit by (ii) .0375% by (iii) the number of days from and inclusive of the date of the Individual Leasing Record for the Unit to (but not inclusive of) the first day of the calendar month next following the date of such Individual Leasing Record; said amount to be payable on the first day of such next following calendar month.

(c) quarterly rent adjustment: in addition to the rent payable by Lessee to Lessor as specified in clauses (a) and (b) above, Lessee shall pay Lessor a rental adjustment quarterly ("Quarterly Rental Adjustment") on November 1, February 1, May 1, and August 1 of each year during the lease term of each Unit ("Quarterly Rental Adjustment Date") commencing November 1, 1980, if the prime rate of interest that New England Merchants National Bank, Boston, Massachusetts, charges its largest, most creditworthy corporate customers for 90-day commercial loans ("Prime Rate") is greater than 12% per annum on the first day of the calendar month next preceding the Quarterly Rental Adjustment Date. The Quarterly Rental Adjustment shall be for the calendar quarter commencing on the Quarterly Rental Adjustment Date for such quarter and shall be calculated in the following manner: (1) first, by determining the Prime Rate in effect on the first day of the calendar month next preceding the particular Quarterly Rental Adjustment Date for such calendar quarter; (2) second, by subtracting 12% from the sum determined in (1), and by dividing that difference by four (4); and (3) third, by multiplying the quotient determined in (2) by the Unamortized Acquisition Cost of each Unit as of the last day of (and after giving effect to the payment of rent actually received by Lessor for) the calendar month next preceding the particular Quarterly Adjustment Date for the calendar quarter as to which such Quarterly Rental Adjustment is being made. In the case only of the Quarterly Rental Adjustment to be made on November 1, 1980, the Unamortized Acquisition Cost shall be determined as of, and after giving effect to the payment of rent actually received by Lessor on, November 1, 1980. The Quarterly Rental Adjustment for each calendar quarter shall be due and payable on

the Quarterly Rental Adjustment Date for such quarter. As used herein the term Unamortized Acquisition Cost with respect to any Unit as of the last day of any full calendar month during the lease term of such Unit (and after giving effect to the payment of rent actually received by Lessor for such month) means an amount equal to that percentage of the Acquisition Cost of such Unit as is set forth on Exhibit C attached hereto opposite such month.

Maximum Lessor's Cost: \$1,600,000.00

Acquisition Expiration Date: December 31, 1980

Late Charge Rate Per Annum: 18%

Balance Sheet Date: December 31, 1979 (Lessor has also reviewed Lessee's interim unaudited statements dated March 31, 1980 and June 30, 1980)

Public Liability Insurance: \$5,000,000.00 per occurrence

Attest:


Assistant Clerk

(Corporate Seal)

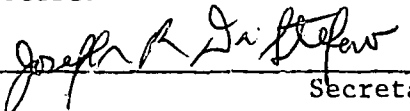
NEW ENGLAND MERCHANTS FUNDING CORPORATION (Lessor)

By 

Its President
(Title)



Attest:


Secretary

(Corporate Seal)

PROVIDENCE AND WORCESTER RAILROAD COMPANY (Lessee)

By 


Its VICE PRESIDENT
(Title)

EXHIBIT A TO RAILROAD EQUIPMENT LEASING AGREEMENT

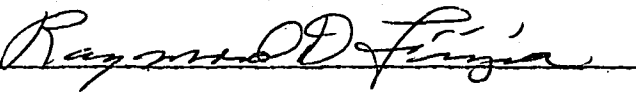
| <u>Quantity</u> | <u>Description</u> | <u>AAR Mechanical Designation</u> | <u>Reporting Marks and Car Numbers</u> | <u>Purchase Price per Unit</u> |
|-----------------|--|-----------------------------------|--|--------------------------------|
| 36 | New 100-ton, 52' 6" gondola railroad cars manufactured by Greenville Steel Car Company | G312 | WRWK 20,001 through 20,036 | \$41,800.00 |

NEW ENGLAND MERCHANTS FUNDING CORPORATION (Lessor)

By 

Its _____ President
(Title) 

PROVIDENCE AND WORCESTER RAILROAD COMPANY (Lessee)

By 

Its VICE PRESIDENT
(Title)

EXHIBIT B TO RAILROAD EQUIPMENT LEASING AGREEMENT

INDIVIDUAL LEASING RECORD NO. _____, DATED _____, 19__.

under

RAILROAD EQUIPMENT LEASING AGREEMENT dated as of October 9, 1980 (the "Lease") between New England Merchants Funding Corporation, as lessor ("Lessor"), and Providence and Worcester Railroad Company, as lessee ("Lessee").

1. Units of Equipment

Lessee hereby certifies that the Units described below (the "Leased Units") have been delivered to the location indicated below, inspected by Lessee, found to be in good working order, repair and condition, and unconditionally accepted as Units of Equipment under the Lease all on the date hereof. Lessor and Lessee hereby agree that the Leased Units are leased under, and subject to all of the terms, conditions and provisions of, the Lease as of the date hereof.

Number of Leased Units:

Manufacturer of Leased

Units:

Greenville Steel Car Company

Description of Leased

Units:

New 100-ton, 52' 6" gondola railroad cars.

AAR Mechanical Description: G312

Reporting Marks and Car Nos.: WRWK 20,001 through 20,036

Location of Leased Units:

Acquisition Cost per

Leased Unit:

\$ 41,800.00

Total Acquisition Cost

of Leased Units:

\$ _____

Lease Term of Leased

Units:

ninety-six (96) full calendar months (plus partial first month, if this Individual Leasing Record is dated other than the first day of a calendar month) commencing on the date hereof and ending on _____, 19__.

Rent for Leased Units:

- (a) for each full calendar month of lease term: \$ _____ (plus applicable sales/use tax), commencing on _____, 19__.
- (b) for partial first month of lease term: \$ _____ (plus applicable sales/use tax).
- (c) quarterly rental adjustment commencing November 1, 1980: as specified in Schedule I to the Lease.

2. Representations by Lessee

Lessee hereby represents and warrants to Lessor that on the date hereof:

(1) The representations and warranties of Lessee set forth in the Lease are true and correct in all material respects as though made on and as of the date hereof.

(2) Lessee has satisfied or complied with all requirements set forth in the Lease (including the delivery of any certificate required therein) to be satisfied or complied with on or prior to the date hereof.

(3) No Event of Default under the Lease has occurred and is continuing.

(4) Lessee has obtained, and there are in full force and effect, such insurance policies with respect to each Leased Unit accepted pursuant hereto as are required to be obtained under the terms of the Lease.

Dated the date set forth above.

NEW ENGLAND MERCHANTS FUNDING CORPORATION

(Lessor)

By 

(Authorized Signature)

Its 

President

(Title)

PROVIDENCE AND WORCESTER RAILROAD COMPANY

(Lessee)

By 

(Authorized Signature)

Its

VICE PRESIDENT

(Title)

EXHIBIT C TO RAILROAD EQUIPMENT LEASING AGREEMENT

(Casualty Values)

| Calendar Month No. | Percentage of Acquisition Cost (after payment of rent for corresponding month) | Calendar Month No. | Percentage of Acquisition Cost (after payment of rent for corresponding month) |
|-----------------------|---|-----------------------|---|
| Prior to Month No.1 | 100.00 | 49 | 65.69 |
| 1 | 99.39 | 50 | 64.74 |
| 2 | 99.41 | 51 | 63.78 |
| 3 | 98.94 | 52 | 62.81 |
| 4 | 98.46 | 53 | 61.84 |
| 5 | 97.97 | 54 | 60.85 |
| 6 | 97.48 | 55 | 59.85 |
| 7 | 96.98 | 56 | 58.85 |
| 8 | 96.48 | 57 | 57.84 |
| 9 | 95.97 | 58 | 56.81 |
| 10 | 95.46 | 59 | 55.78 |
| 11 | 94.94 | 60 | 54.74 |
| 12 | 94.42 | 61 | 53.69 |
| 13 | 93.89 | 62 | 52.63 |
| 14 | 93.36 | 63 | 51.56 |
| 15 | 92.82 | 64 | 50.47 |
| 16 | 92.27 | 65 | 49.38 |
| 17 | 91.72 | 66 | 48.28 |
| 18 | 91.17 | 67 | 47.17 |
| 19 | 90.45 | 68 | 46.05 |
| 20 | 89.74 | 69 | 44.91 |
| 21 | 89.01 | 70 | 43.77 |
| 22 | 88.28 | 71 | 42.62 |
| 23 | 87.54 | 72 | 41.45 |
| 24 | 86.79 | 73 | 40.28 |
| 25 | 86.04 | 74 | 39.09 |
| 26 | 85.28 | 75 | 37.89 |
| 27 | 84.51 | 76 | 36.68 |
| 28 | 83.74 | 77 | 35.45 |
| 29 | 82.95 | 78 | 34.23 |
| 30 | 82.16 | 79 | 32.99 |
| 31 | 81.37 | 80 | 31.74 |
| 32 | 80.56 | 81 | 30.47 |
| 33 | 79.75 | 82 | 29.19 |
| 34 | 78.93 | 83 | 27.90 |
| 35 | 78.11 | 84 | 26.60 |
| 36 | 77.27 | 85 | 25.29 |
| 37 | 76.42 | 86 | 23.96 |
| 38 | 75.57 | 87 | 22.62 |
| 39 | 74.72 | 88 | 21.27 |
| 40 | 73.85 | 89 | 19.91 |
| 41 | 72.98 | 90 | 18.53 |
| 42 | 72.09 | 91 | 17.14 |
| 43 | 71.20 | 92 | 15.74 |
| 44 | 70.31 | 93 | 14.32 |
| 45 | 69.40 | 94 | 12.90 |
| 46 | 68.48 | 95 | 11.45 |
| 47 | 67.56 | 96 | 10.00 |
| 48 | 66.63 | | |

NEW ENGLAND MERCHANTS FUNDING CORPORATION

By *W. A. Alcock* (Lessor)Its *President*
(Title)

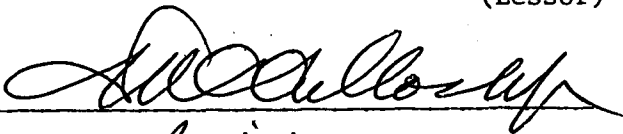
PROVIDENCE AND WORCESTER RAILROAD COMPANY

By *Raymond D. Finner* (Lessee)Its *VICIE PRESIDENT*
(Title)

EXHIBIT D TO RAILROAD EQUIPMENT LEASING AGREEMENT
(Termination Values)

| <u>Monthly Rent</u> <u>Payment Number</u> | <u>Percentage of Acquisition</u> <u>Cost (after payment of</u> <u>rent for corresponding</u> <u>month)</u> | <u>Monthly Rent</u> <u>Payment Number</u> | <u>Percentage of Acquisition</u> <u>Cost (after payment of</u> <u>rent for corresponding</u> <u>month)</u> |
|--|---|--|---|
| 36 | 77.27 | 66 | 48.28 |
| 37 | 76.42 | 67 | 47.17 |
| 38 | 75.57 | 68 | 46.05 |
| 39 | 74.72 | 69 | 44.91 |
| 40 | 73.85 | 70 | 43.77 |
| 41 | 72.98 | 71 | 42.62 |
| 42 | 72.09 | 72 | 41.45 |
| 43 | 71.20 | 73 | 40.28 |
| 44 | 70.31 | 74 | 39.09 |
| 45 | 69.40 | 75 | 37.89 |
| 46 | 68.48 | 76 | 36.68 |
| 47 | 67.56 | 77 | 35.45 |
| 48 | 66.63 | 78 | 34.23 |
| 49 | 65.69 | 79 | 32.99 |
| 50 | 64.74 | 80 | 31.74 |
| 51 | 63.78 | 81 | 30.47 |
| 52 | 62.81 | 82 | 29.19 |
| 53 | 61.84 | 83 | 27.90 |
| 54 | 60.85 | 84 | 26.60 |
| 55 | 59.85 | 85 | 25.29 |
| 56 | 58.85 | 86 | 23.96 |
| 57 | 57.84 | 87 | 22.62 |
| 58 | 56.81 | 88 | 21.27 |
| 59 | 55.78 | 89 | 19.91 |
| 60 | 54.74 | 90 | 18.53 |
| 61 | 53.69 | 91 | 17.14 |
| 62 | 52.63 | 92 | 15.74 |
| 63 | 51.56 | 93 | 14.32 |
| 64 | 50.47 | 94 | 12.90 |
| 65 | 49.38 | 95 | 11.45 |
| | | 96 | 10.00 |

NEW ENGLAND MERCHANTS FUNDING CORPORATION
(Lessor)

By 
Its President
(Title)

PROVIDENCE AND WORCESTER RAILROAD COMPANY
(Lessee)

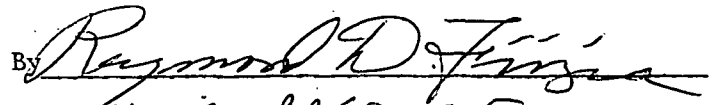
By 
Its VICE PRESIDENT
(Title)

EXHIBIT E TO RAILROAD EQUIPMENT LEASE AGREEMENT

BILL OF SALE

GREENVILLE STEEL CAR COMPANY (hereinafter called the Builder), for and in consideration of the sum of One Dollar and other valuable considerations to it paid, receipt of which is hereby acknowledged, does hereby sell, assign, transfer and set over to the New England Merchants Funding Corporation (hereinafter called the Company) the railroad equipment hereinafter described.

| <u>Number of Units</u> | <u>Description</u> | <u>Road Numbers</u> |
|----------------------------|--|--------------------------------------|
| 36 | 52'6" 100-Ton Fixed End Mill Gondola Cars | WRWK 20001 - 20036 Both Inclusive |

And the Builder hereby warrants to the Company that it is the sole owner of said railroad equipment, and that at the time of delivery thereof to the Company, the Builder had legal title to all said railroad equipment and good and lawful right to sell the same, and that the title to said railroad equipment hereby duly vested in the Company was, at the time of delivery of said railroad equipment to the Company, free of all claims, liens, and encumbrances of any nature whatsoever.

IN WITNESS WHEREOF, the Builder has caused its corporate seal to be hereto affixed, duly attested, and this instrument to be signed in its name by its Treasurer this day of , 1980.

GREENVILLE STEEL CAR COMPANY

By _____
Treasurer

ATTEST:

Assistant Secretary

RG *[Signature]*

ACKNOWLEDGMENT

~~COMMONWEALTH~~
STATE OF Mass.)
COUNTY OF Suffolk) ss.:

On this 20th day of October, 1980, before me
personally appeared E. F. McCulloch, Jr., to me personally
known, who being by me duly sworn, says that he is President
of NEW ENGLAND MERCHANTS FUNDING CORPORATION
that one of the seals affixed to the foregoing instrument is the corporate seal
of said Corporation, that said instrument was signed and sealed on behalf of said
Corporation by authority of its Board of Directors, and he acknowledged that the
execution of the foregoing instrument was the free act and deed of said
Corporation.

[Signature]
Notary Public

[Notarial Seal]

My Commission Expires: 8/7/81

STATE OF RHODE ISLAND)
COUNTY OF PROVIDENCE) ss.:

On this 20th day of OCTOBER, 1980, before me
personally appeared RAYMOND D. FINIZIA, to me personally
known, who being by me duly sworn, says that he is VICE PRESIDENT
of PROVIDENCE AND WORCESTER RAILROAD COMPANY
that one of the seals affixed to the foregoing instrument is the corporate seal
of said Corporation, that said instrument was signed and sealed on behalf of said
Corporation by authority of its Board of Directors, and he acknowledged that the
execution of the foregoing instrument was the free act and deed of said
Corporation.

[Signature]
Notary Public

[Notarial Seal]

My Commission Expires: 6/30/81